

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-230

In the Matter of

Amendment of Section 73.202(b), RM-8298
Table of Allotments, RM-8359
FM Broadcast Stations.
(Madison, South Dakota and
Slayton, Minnesota)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: June 30, 1994;

Released: July 15, 1994

By the Acting Chief, Allocations Branch:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 8 FCC Rcd 5115 (1993), issued in response to a petition filed by Wallace Christensen ("Christensen"). Christensen requested the substitution of Channel 276C2 for Channel 276A at Slayton, Minnesota, and modification of his construction permit for Station KLOH-FM to specify operation on Channel 276C2. Christensen also requested the substitution of Channel 288A for Channel 276A at Madison, South Dakota, and modification of the license for Station KJAM-FM to accommodate the upgrade at Slayton. Christensen filed comments restating his support for the allotment of Channel 276C2 at Slayton. Comments and a counterproposal were filed by Madison Broadcasting Company, Inc. ("Madison Broadcasting").¹ Christensen and Madison filed joint reply comments.

2. Madison Broadcasting counterproposed the substitution of Channel 276C2 for Channel 276A at Madison, South Dakota, and the modification of the license for Station KJAM-FM to specify operation on the upgraded channel. Madison Broadcasting further proposes the substitution of Channel 291C2 for Channel 276A at Slayton, Minnesota, and modification of the construction permit (BPH-921216MC) for Station KLOH-FM to specify operation on Channel 291C2. According to Madison Broadcasting, Channel 291C2 can be allotted to Slayton at the site presently specified in Christensen's construction permit. Madison Broadcasting points out that, if accepted, its counterproposal provides wide-area FM service to both Madison, South Dakota, and Slayton, Minnesota, rather than simply to Slayton, as proposed in the *Notice*.

3. Christensen and Madison Broadcasting submitted joint reply comments. Christensen stated that his primary interest is to obtain a C2 allotment at Slayton and that he has no objection to the allotment of Channel 291C2 in lieu of Channel 276C2 at Slayton. Christensen and Madison Broadcasting believe that the counterproposal filed by Madison constitutes an incompatible channel swap and that competing expressions of interest for Channel 291C2 at Slayton should not be considered, if received. Christensen and Madison Broadcasting refer to the *Modification of FM Broadcasting Licenses to Higher Class Co-Channel or adjacent Channels*, 60 RR 2d 114 (1986), wherein the Commission considered variations of the mutual exclusivity rule that would allow existing licensees to upgrade while protecting their interest in their existing facilities. Christensen and Madison Broadcasting argue that such a mutually exclusive relationship exists in this case as Channel 291 is the only channel currently available for allotment at Slayton. Although Christensen states his willingness to apply for Channel 291A at Slayton to accommodate an upgrade at Madison, Christensen and Madison Broadcasting believe the most prudent course of action is to allot Channel 276C2 to Madison and Channel 291C2 at Slayton, allowing for increased service in both communities.

4. Based on the above information, we believe the public interest would be served by substituting Channel 276C2 for Channel 276A at Madison, South Dakota. Channel 276C2 can be allotted to Madison at the current site for Station KJAM-FM.² We shall also substitute Channel 291C2 for Channel 276A at Slayton, Minnesota. Channel 291C2 can be allotted to Slayton, Minnesota, at the authorized site for Station KLOH-FM.³ We shall also modify the license for Station KJAM-FM, Madison, to specify operation on Channel 276C2 and the Construction Permit for Station KLOH-FM, Slayton, to specify operation on Channel 291C2 in accordance with Section 1.420(g) of the Commission's Rules. Although Christensen and Madison Broadcasting argue that the Commission should not have solicited competing expressions of interest for Channel 291C2 at Slayton, the Commission staff did not undertake an analysis to determine if the counterproposal qualified as an incompatible channel swap pursuant to Section 1.420(g)(3) of the Commission's Rules in view of the fact that no additional comments were received expressing an interest in the allotment of Channel 291C2 at Slayton.

5. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **August 29, 1994**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

Community	Channel No.
Madison, South Dakota	276C2
Slayton, Minnesota	291C2

¹ The counterproposal was put on public notice on October 22, 1993, Report No. 1978 (RM-8359). The Public Notice indicated that competing expressions of interest in the use of channel 291C2 at Slayton should be filed within fifteen days of the date of the Public Notice.

² The coordinates for Channel 276C2 at Madison are 43-59-08 and 97-07-42.

³ The coordinates for Channel 291C2 at Slayton are 43-59-43 and 95-44-51.

6. IT IS FURTHER ORDERED, pursuant to the authority contained in Section 316 of the Communications Act of 1934, as amended, that the license of Station KJAM-FM, Madison, South Dakota, IS MODIFIED to specify operation on Channel 276C2 and the Construction Permit for Station KLOH-FM, Slayton, Minnesota, IS MODIFIED to specify operation on Channel 291C2, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee/permittee shall file with the Commission a minor change application for construction permit (Form 301), specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

7. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Wallace Christensen, permittee of FM Station KLOH-FM, Slayton, Minnesota, and Madison Broadcasting Company, Inc., licensee of Station KJAM-FM, Madison, South Dakota, are required to submit a rule making fee in addition to the fee required for the applications to effect the upgrade.

8. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

9. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau